

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

JANICE LYNETTE ALLEN,
AS SUCESSOR IN INTEREST,
ADMINISTRATOR OF THE
ESTATE OF AND WIDOW OF
TIMOTHY LIONAL ALLEN,

PLAINTIFF,

V.

THE UNITED STATES OF
AMERICA

DEFENDANT.

CIVIL ACTION FILE NO.:

1:15-CV-00147-JRH-BKE

PLAINTIFF'S FIRST AMENDED COMPLAINT

Comes now the Plaintiff Janice Lynette Allen as successor in interest and administrator of the estate of, and widow of Timothy Lionel Allen the plaintiff through her undersigned counsel and files this complaint against defendant United States of America and shows the court as follows:

Parties, Jurisdiction, and Venue

1.

The plaintiff is a citizen of the state of Georgia and resides in the city of Blythe, County of Richmond.

2.

Defendant the United States of America operates the Charlie Norwood Veterans Affairs Hospital in Augusta Georgia and other VA facilities around the United States.

3.

Plaintiff brings this action of the federal tort claims act having previously submitted a claim to the Department of Veterans Affairs which was denied within six months of the institution of this lawsuit

Factual Background Relevant to All Counts

4.

Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as if fully restated.

5.

Plaintiff was at the time of his death he 51-year-old veteran.

6.

Plaintiffs served honorably in United States Army and was honorably discharged prior to the incident that is relevant to this matter.

7.

That on or about, October 12, 2012 while being treated at the Charlie Norwood medical Center in Augusta Georgia Mr. Allen, the decedent, was diagnosed with early stage renal failure.

8.

This diagnosis was supported by finding of micro albumira in his urine or increased albumira, a well-documented sign of early-stage renal failure.

9.

That on or about April 17, 2013, while being treated at the Charlie Norwood VA hospital in Augusta, GA, the Plaintiff, was diagnosed with elevated creatinine, again, another well documented sign of early stage renal (kidney) failure, and was told by staff members of the VA to avoid renal toxic medications.

10.

That sometime before May 14, 2014, representatives of the VA discovered that Plaintiff had elevated levels of the prostate specific antigen (PSA) that indicated the presence of Prostate Cancer.

11.

Said representatives of the VA failed to follow-up with Mr. Allen regarding his elevated PSA.

12.

That upon returning to the VA for other medical issues, Mr. Allen's PSA level was tested again, and it was highly elevated, indicating the presence of advanced cancer.

13.

The VA then began treating him for his Prostate Cancer, but by that time it had metastasized.

14.

That on or about May 14, 2014, while being treated at the Charlie Norwood VA Hospital in Augusta, GA, for the aforementioned metastatic prostate cancer, Plaintiff was prescribed the pharmaceutical "Zometa" (Zoledronic Acid)

15.

Zometa is a highly dangerous medication for persons with a history of kidney problems

16.

Within a couple of weeks of being prescribed the Zometa and Mr. Allen taking it per the Defendant's prescription, Mr. Allen suffered total kidney failure.

17.

Mr. Allen's kidney failure was caused by his ingestion of Zometa pursuant to Defendant's orders.

18.

Mr. Allen endured the painful and debilitating effects of kidney failure including extreme pain and toxicity and a lifestyle that revolved around his intense dialysis schedule

19.

Mr. Allen endured this pain and suffering until his untimely death on February 4, 2015.

Count I

Medical Malpractice

20.

Plaintiff hereby incorporates the allegations contained in the preceding paragraphs as if fully restated herein.

21.

The physicians, nurses, and other staff of the Charlie Norwood VA failed to exercise the standard of care and skill ordinarily used by these individuals under same or similar circumstances as those relevant to this case in their care and treatment of patients such as Mr. Allen.

22.

The VA breached the standard of care described in the preceding paragraph by negligently prescribing Mr. Allen renal toxic medications that caused him kidney failure after having previously diagnosing him with early stage renal failure multiple times and instructing him not to take any renal toxic medications.

23.

Defendant's negligence is the sole, direct, and proximate cause of Mr. Allen's significant personal injuries alleged in this complaint.

Count 2

Medical Malpractice

24.

Plaintiff hereby incorporates the allegations contained in the preceding paragraphs as if fully restated herein.

25.

The physicians, nurses, and other staff of the Charlie Norwood VA failed to exercise the standard of care and skill ordinarily used by these individuals under same or similar circumstances as those relevant to this case in their care and treatment of patients such as Mr. Allen.

26.

The VA breached the standard of care described in the preceding paragraph by negligently failing to follow up with Mr. Allen regarding his elevated PSA levels and allowing his cancer to develop and grow until it was end stage.

27.

Defendant's negligence is the sole, direct, and proximate cause of Mr. Allen's significant personal injuries alleged in this complaint.

Count 3

Damages

28.

Plaintiff hereby incorporates the allegations contained in the preceding paragraphs as if fully restated herein.

29.

Janice Lynette Allen is the Successor in Interest, and the Administrator of the Estate of Timothy Lionel Allen, deceased, and is the proper party to bring this claim for Mr. Allen's pre-death pain and suffering, his funeral expenses and his medical expenses.

30.

Defendant is liable to the Plaintiff for the pre-death pain and suffering of Mr. Allen, his funeral expenses and medical expenses.

31.

Janice Lynette Allen, the surviving spouse of Mr. Allen is the proper party to bring a claim for the wrongful death of Mr. Allen.

32.

Defendant is liable to Plaintiff for the full value of the life of Mr. Allen.

Wherefore, Plaintiff prays:

- A. That summons and process issue and be served upon Defendant according to law;
- B. That judgment be granted in Plaintiff's favor against Defendant for an amount to be determined;
- C. That Plaintiff be awarded attorney's fees and expenses incurred by the filing of this lawsuit;
- D. That Plaintiff recover the full value of the life of the decedent;
- E. That Plaintiff recover for the decedent's pre-death mental and physical pain and suffering, funeral, and medical expenses; and
- F. That this honorable Court award Plaintiff any and all further relief as it deems just and proper.

Respectfully submitted this 11th day of October, 2016

/s/Joseph Rhodes
Joseph T. Rhodes
Ga. Bar No.: 309847
Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I, the undersigned counsel, hereby certify, that I have this 11th day of October, 2016 served the United States with a true and accurate copy of the foregoing Plaintiff's First Amended Complaint via the ECF system's electronically generated email to:

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Respectfully submitted this 11th day of October, 2016

/s/Joseph Rhodes
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